

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
COURT FILE NO.: _____**

Nicholas Arend,

Plaintiff,

v.

NCO Financial Systems, Inc.,

Defendant.

COMPLAINT

WITH JURY TRIAL DEMAND

INTRODUCTION

1. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA").

JURISDICTION

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).

PARTIES

3. Plaintiff Nick Arend is a natural person who resides in the City of Minnetonka, County of Hennepin, State of Minnesota, and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
4. Defendant NCO Financial Systems, Inc. (hereinafter "NCO") is a Pennsylvania debt collection agency headquartered at 507 Prudential Road, Horsham, PA, 19044 and has a registered agent at 100 S. 5th St. #1075, Minneapolis, MN, 55402. Defendant is a "debt collector" as that term is defined by 15 U.S.C. §1692 a(6).

FACTUAL ALLEGATIONS

5. Sometime prior to October 2008 Plaintiff allegedly incurred a debt, which is a “consumer debt” as that term is defined by 15 U.S.C. § 1692a(5), with Citigroup.
6. Prior to October 2008 the debt was transferred, purchased, or otherwise directed to Defendant NCO for collection.
7. On October 15, 2008, Plaintiff answering machine outgoing message advised all callers that: “This is Nick and Jenni, leave a message.”
8. Despite hearing this outgoing message advising Defendant that someone in addition to the Plaintiff used and listened to that message machine, on October 15, 2008, Defendant left a telephone message stating:

“Hi. This confidential and important message is left solely for Nicholas Arend. My Name is Oliver Oing. The law requires I notify you I am calling with NCO Financial, a debt collection company. This is an attempt to collect a debt any information is used for that purpose. Please contact me back today at 800 220 1942. Again my number is 800 220 3630. Thank you.”
9. Plaintiff’s girlfriend played and listened to the message before Plaintiff was able to hear and / or delete the message left by NCO.
10. Defendant continued to leave the same pre-recorded messages (at least three times) on Plaintiff’s answering machine over the course of several weeks.
11. Defendant’s answering machine message knowingly discloses the existence of the debt to a third party, in violation of 15 U.S.C. §§1692b(2), 1692c(B), and 1692f.

12. As a result of Defendant's violation, Plaintiff's person financial information was shared with his girlfriend who then became upset with Plaintiff.
13. Defendant's conduct has caused Plaintiff emotional distress, anxiety and humiliation in an amount to be determined at trial.

TRIAL BY JURY

14. Plaintiff is entitled to and hereby demands a trial by jury. US Const. amend. 7.
Fed. R. Civ. Pro. 38.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §1692 et seq

15. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
16. The foregoing acts and omissions of Defendant constitutes numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. §1692 et seq.
17. As a result of Defendant's violations of the FDCPA, Plaintiff has suffered and is entitled to actual damages pursuant to 15 U.S.C. §1692k(a)(1); statutory damages pursuant to 15 U.S.C. §1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. §1692k(a)(3) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that relief be granted as follows:

- That an order be entered declaring that Defendant's actions as described above are in violation of the FDCPA;
- That judgment be entered against Defendant for actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- That judgment be entered against Defendant for statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A) and (B);
- That the Court award costs and reasonable attorneys' fees, pursuant to 15 U.S.C. § 1692k(a)(3); and
- That the Court grant such other and further relief as may be just and proper.

Dated this 3rd day of February, 2009.

Respectfully submitted,

By: s/ Thomas J. Lyons Jr.
CONSUMER JUSTICE CENTER, P.A.
Thomas J. Lyons, Jr., Esq.
367 Commerce Court
Vadnais Heights, MN 55127
Telephone: (651) 770-9707
Facsimile: (651) 704-0907
tommycj@comcast.net

ATTORNEYS FOR PLAINTIFF

VERIFICATION OF COMPLAINT AND CERTIFICATION BY PLAINTIFF

[illegible]

I, Nicholas Arend, having first been duly sworn and upon oath, deposes and says as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorney and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.

s/Nicholas Arend
Nicholas Arend

Subscribed and sworn to before me
This 23rd day of January, 2009.

Susan M. Johnson
Notary Public